

1  
2 **Q24. AT WHAT POINT IN TIME DURING THE PROCEEDING DID STAFF REACH**  
3 **THE CONCLUSION THAT MOST OF THE COMPANIES WERE USING THEIR**  
4 **FACILITIES FOR BACKHAUL RATHER THAN DEDICATED TRANSPORT?**

5  
6 **A24.** Staff began its analysis of the census data prior to CLECs submitting their  
7 testimony. Responses to the Commission's census data request suggested the  
8 possibility that competitive carriers use their facilities to backhaul the traffic  
9 rather than carrying traffic over dedicated transport facilities. The census data  
10 indicated that competitive carriers do not typically use their facilities for  
11 dedicated transport. Staff reached that conclusion based on several factors,  
12 including its own analysis of the data and CLEC evidence that facilities were  
13 used to carry the traffic to their own switches, or interim collocation points, which  
14 is not indicative of the dedicated transport. In addition, Staff received  
15 competitive carriers' responses to data requests, where they either confirmed or  
16 denied the presence of dedicated transport routes.

17  
18 **Q25. HOW MANY CLECS DID STAFF CONCLUDE PROVIDE DEDICATED**  
19 **TRANSPORT?**

1 **A25.** From the data presented, Staff concluded that only a few CLECs satisfy the  
2 FCC definition of providing dedicated transport. BEGINNING PROPRIETARY  
3 \*\*\*\*\* END PROPRIETARY should not be  
4 included in the trigger analysis since it stated that the Company established  
5 collocation arrangements at the wire centers noted by Verizon BEGIN  
6 PROPRIETARY \*\*\*\*\*  
7 \*\*\*\*\*  
8 \*\*\*\*\*  
9 \*\*\*\*\*  
10 \*\*\*\*\*  
11 \*\*\*\*\*  
12 \*\*\*\*\*  
13 \*\*\*\*\*  
14 \*\*\*\*\*  
15 \*\*\*\*\*  
16 \*\*\*\*\*  
17 \*\*\*\*\* END PROPRIETARY Therefore, based on  
18 the data, Staff believes that BEGIN PROPRIETARY \*\*\*\*\*  
19 END PROPRIETARY can be excluded from the impairment analysis.  
20

<sup>30</sup> BEGIN PROPRIETARY \*\*\*\*\* END PROPRIETARY

1 Based on the evidence presented to Staff, Staff concluded that the following  
2 companies may provide dedicated transport and should be included in Staff's  
3 impairment analysis: BEGIN PROPRIETARY \*\*\*\*\*<sup>31</sup>  
4 \*\*\*\*\*  
5 \*\*\*\*\*<sup>32</sup>  
6 \*\*\*\*\*  
7 \*\*\*\*\*  
8 \*\*\*\*\* END PROPRIETARY

9  
10 Q26. DO YOU BELIEVE THAT BEGIN PROPRIETARY \*\*\*\*\*  
11 \*\*\*\*\*END PROPRIETARY MEET THE REQUIREMENTS OF THE  
12 TRIGGER ANALYSIS?

13  
14 A26. Since neither BEGIN PROPRIETARY \*\*\*\*\*END PROPRIETARY  
15 responded to the Commission's census data request nor Staff's data requests,  
16 Staff lacks sufficient evidence to determine categorically if these companies  
17 should count toward the trigger. In testimony on behalf of BEGIN PROPRIE-  
18 TARY \*\*\*\*\*

<sup>31</sup> BEGIN PROPRIETARY Verizon also listed Metromedia Fiber in its analysis, and Metromedia Fiber provides service in the Washington LATA AboveNet. Since AboveNet was the entity responding to the Commission's census data request, Staff is analyzing these companies under the name AboveNet, and not Metromedia Fiber. END PROPRIETARY

<sup>32</sup> BEGIN PROPRIETARY Lightwave sold collocation sites cited by Verizon and the associated routes to Looking Glass Networks ("LGN") in December 2002. As such, Lightwave no longer has or maintains any facilities within Maryland. END PROPRIETARY

1 \*\*\*\*\*<sup>33</sup> **END**  
2 **PROPRIETARY** The testimony of John R. Gilbert and Carlo Michael Peduto, III  
3 supports **BEGIN PROPRIETARY** \*\*\*\*\* **END PROPRIETARY** fa-  
4 cilities counting toward the triggers in both the Baltimore and Washington  
5 LATAs. **BEGIN PROPRIETARY** \*\*\*\*\* **END PROPRIETARY** testimony  
6 contradicts the testimony of Mr. Gilbert and Mr. Peduto.

7  
8 **BEGIN PROPRIETARY** \*\*\*\*\*  
9 \*\*\*\*\*  
10 \*\*\*\*\* **END**  
11 **PROPRIETARY** As a consequence, Staff evaluated the routes Verizon indi-  
12 cated this company owns under the name **BEGIN PROPRIETARY** \*\*\*\*\* **END**  
13 **PROPRIETARY**. However, Staff did not receive any supporting evidence from  
14 this company. Staff reserves the right to file supplementary testimony in the  
15 event future data is presented that would alter Staff's conclusion about any of  
16 the **BEGIN PROPRIETARY** \*\*\*\*\* **END PROPRIETARY** routes identified by  
17 Verizon.

18  
19 **Q27. DID YOU INCLUDE BEGIN PROPRIETARY \*\*\*\*\* END**  
20 **PROPRIETARY IN YOUR ANALYSIS AND WHY?**

21  

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<sup>33</sup> **BEGIN PROPRIETARY** \*\*\*\*\* **END PROPRIETARY**

1 **A27.** Yes, I did. In its testimony, Verizon included these companies in its trigger  
2 analysis. Staff, therefore, believes that it is appropriate to address whether or  
3 not Verizon was correct to have included these companies as counting toward  
4 the self-provisioning trigger and/or wholesale triggers.

5  
6 **TRIGGER ANALYSIS**  
7

8 **Q28. HAVE YOU EVALUATED THE TRANSPORT ROUTES ALLEGED BY VERI-**  
9 **ZON TO MEET THE SELF-PROVISIONING AND WHOLESALE TRIGGERS?**  
10

11 **A28.** Yes. Staff evaluated those routes that were identified by Verizon, where a  
12 number of CLECs were identified as the self-provisioning or wholesale providers  
13 of dedicated transport.  
14

15 **Q29. PLEASE, DESCRIBE THE PROCESS THAT YOU FOLLOWED IN YOUR**  
16 **ANALYSIS OF THE DATA?**  
17

18 **A29.** Staff conducted its own independent analysis of the data. The Commission  
19 received responses to its census data request from a number of CLECs. This  
20 data was consolidated into one spreadsheet that contained information  
21 collected from all CLECs that responded to the Commission's request. The

1 data was sorted by company and CLLI<sup>34</sup> codes. Staff followed the FCC's  
2 directive to conduct a route-specific review "...according to different capacities  
3 and make findings of impairment or non-impairment based on the record."<sup>35</sup>  
4 Specifically, Staff made a line-by-line comparison between each route specified  
5 by Verizon in its initial testimony and routes specified by each of the CLECs in  
6 the census data response. The line-by-line comparison included the evaluation  
7 of each route on a capacity level as well as whether a competitive carrier  
8 indicated its service provisioning on a retail or wholesale basis. Upon the  
9 receipt of Verizon's supplemental dedicated transport filing and CLECs  
10 testimony, Staff conducted the same type of a line-by-line analysis. As Staff  
11 received supplemental responses from CLECs, Staff incorporated the additional  
12 information into the analysis to change or validate prior conclusions. Staff's  
13 findings are based on the routes identified by Verizon in its supplemental  
14 testimony, CLEC responses to the Commission's census data as well as CLEC  
15 testimonies and CLEC responses to the Staff's data requests.

16  
17 **Q30. WERE THE TRANSPORT ROUTES IDENTIFIED BY VERIZON AS ROUTES**  
18 **THAT MET THE SELF-PROVISIONING TRIGGER CONFIRMED BY ANY**  
19 **CLEC?**  
20

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<sup>34</sup> Common Language Location Identifier is the code that provides a unique identification of facilities at a location. *Newton's Telecom Dictionary*, 17<sup>th</sup> updated and Expanded Edition.

<sup>35</sup> TRO, ¶ 380.

1   **A30.** No, they were not. There were a number of routes identified by VMD that were  
2           an identical match with a CLEC. However, none of the routes satisfied the  
3           FCC's self-provisioning trigger. There were only one or two pairs of competitive  
4           carriers' collocation arrangements found along each of the routes. The FCC's  
5           self-provisioning trigger requires the presence of three or more companies along  
6           each route for the route to become non-impaired. Those routes confirmed by  
7           CLECS and are an identical match with the ones identified by Verizon are listed  
8           in the Attachment FK-D. Highlighted routes are the routes where more than one  
9           CLEC was present along that route.

10  
11   **Q31. WERE THE TRANSPORT ROUTES IDENTIFIED BY VERIZON AS ROUTES**  
12       **THAT MET THE WHOLESALE TRIGGER CONFIRMED BY ANY CLEC?**

13  
14   **A31.** No, they were not. There were also a number of routes identified by VMD that  
15           were an identical match with a CLEC. However, none of the routes satisfied the  
16           FCC's wholesale trigger. Although Staff identified an identical match between  
17           two pairs of CLEC routes and Verizon's, Staff cannot make a definite decision  
18           regarding non-impairment for these routes for the reasons detailed below.  
19           Attachment FK-E lists the routes identified as identical matches with routes  
20           identified by Verizon.

1 Q32. STAFF INCLUDED BEGIN PROPRIETARY \*\*\*\*\* END  
2 PROPRIETARY IN THE TRIGGER ANALYSIS WITHOUT SUPPORTING  
3 EVIDENCE FROM THESE COMPANIES. WOULD ANY OF THE STAFF'S  
4 FINDINGS CHANGE IF STAFF DID NOT INCLUDE THOSE COMPANIES IN  
5 ITS ANALYSIS?

6  
7 A32. Verizon identified a DS1 and a DS3 route, BEGIN PROPRIETARY \*\*\*\*\*  
8 \*\*\*\*\*  
9 \*\*\*\*\* END  
10 PROPRIETARY. However, Staff was unable to make a definite finding of non-  
11 impairment based on two factors. First, Staff finds Verizon's presumption that a  
12 dedicated transport route exists because fiber facilities are present in collocation  
13 arrangements unpersuasive. Second, Staff did not receive BEGIN  
14 PROPRIETARY \*\*\*\*\* END PROPRIETARY responses to the Commission's  
15 census data request nor to Staff's data request. Staff reserves the right to file a  
16 supplemental testimony in case if it receives additional data to either support or  
17 contradict the evidence presented by VMD.

18  
19  
20  
21



**SUMMARY AND CONCLUSIONS**

**Q33. DOES YOUR TESTIMONY TAKE INTO ACCOUNT THE EFFECT OF THE  
MARCH 2, 2004 RULING OF THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA?**

**A33.** No, this testimony presents the conclusions regarding my analysis pursuant to the FCC TRO up to the filing date of March 5, 2004 but did not make any changes or adjustments as a result of the March 2, 2004 ruling of the Court of Appeals.

**Q34. PLEASE SUMMARIZE YOUR FINDINGS.**

**A34.** Staff concludes that there is insufficient evidence to overcome the FCC's presumptions of impairment. No routes were found that satisfy the FCC's self-provisioning trigger, where three or more competitive carriers each have deployed DS3 or dark fiber facilities on a particular route. Therefore, Staff concludes that DS3 and dark fiber dedicated transport continues to be impaired from the perspective of the self-provisioning trigger analysis.

1        No routes were found that satisfy the FCC's wholesale facilities trigger, where  
2        two or more competitive carriers each have deployed DS1, DS3, or dark fiber  
3        facilities on a particular route. Therefore, Staff also finds impairment for DS1,  
4        DS3, and dark fiber dedicated transport from the perspective of the wholesale  
5        facilities trigger analysis.

6

7        **Q35. DOES THIS CONCLUDE YOUR TESTIMONY?**

8

9        **A35.** Yes, it does.

**ATTACHMENT FK-A**  
**BACKGROUND AND EXPERIENCE**

**ATTACHMENT FK-A****BACKGROUND AND EXPERIENCE**

I was awarded a Bachelor of Science degree in Chemistry and a Bachelor of Arts degree in Economics from the University of Maryland Baltimore County in 2000. I completed a Master of Arts degree in Economic Policy Analysis at the University of Maryland Baltimore County in 2001. I have been employed with the Commission since I have graduated.

**ATTACHMENT FK-B**

**TRANSMISSION FACILITIES HIERARCHY**

## TRANSMISSION FACILITIES HIERARCHY

Electrical			Optical/Fiber				
Comments	Structure	Standard Nomenclature		Standard Nomenclature	Structure	Bandwidth	Comments
Voice Circuit	1 - 64KB Copper Pair	DS0					No Equivalent
T1, 1.544MB	24 DS0	DS1					No Equivalent
T3, 44.736MB	28 DS1 or 672 DS0	DS3	STS1	OC1	1-DS3 Equivalent	51.84 MB	672 DS0
No Equivalent			STS3	OC3	3-OC1	155.52MB	2,016 DS0
No Equivalent			STS12	OC12	12-OC1	622MB	8,064 DS0
No Equivalent			STS48	OC48	48-OC1	2.488GB	32,256 DS0
No Equivalent			STS19 2	OC192	192-OC1	9.953GB	172,032 DS0, OR 7,168 DS1, OR 256 DS3
No Equivalent				OC256	256-OC1	13.271GB	Standards only
No Equivalent				OC768	768-OC1	39.812GB	Standards Only

1. A DS0 is a basic twisted copper pair across which a standard analog voice service is delivered
2. A DS1 is a digitized combination of 24 DS0 circuits known also as a digital trunk circuit that uses 4 copper wires to carry the signal.
3. A DS3 is a digitized combination of 28 DS1 circuits, which also uses copper wires to carry the signal.
4. Moving up and down the hierarchy requires conversions, for example to take a DS0 out of a DS3 circuit, the DS3 must be converted to 24 DS1 and then the DS1 that contains the single circuit must be converted from a digital to analog format.
5. There is only one way to convert metallic digital trunks to Optical carrier circuits, and that is to convert from DS3 to OC1 and back.

6. The larger the capacity of the facility, the more conversions that need to be made to get one voice circuit extracted.
7. OC1 through OC 48 optical circuits are now standard fare and manufacturers are struggling to get the bugs out of the OC192 gear which is not yet deployed.
8. OC256 and OC768 are defined in standards only and are not yet viable products from any supplier.

DS - Digital Signal

STS - Synchronous Transport Signal - standards by which digital signals are converted from metallic to optical format

OC - Optical Carrier

**ATTACHMENT FK-C**

**TESTIMONY OF THE PARTIES**

**PUBLIC**



Company	VMD Testimony	CLEC Testimony	Census Data Responses/ Data Request Responses
VMD	<ul style="list-style-type: none"> <li>• Evidence of transport routes meeting wholesale trigger is that "the vast majority of competing carriers... have indicated in public statements and filings that they will lease those facilities to other carriers"(VMD Dir., p.40);</li> <li>• VMD identified routes as meeting triggers and "operational" on the basis that it conducted physical inspections of all collocation arrangements included in the case (VMD Dir. P.41);</li> <li>• "If there are fiber-based facilities in two VMD wire centers in a LATA, it is very reasonable to assume that those fiber facilities are part of a CLEC-operated ring and that traffic can be routed from one VZ wire center to the other. It is also reasonable to assume that these CLEC-operated fiber rings connect to the CLEC's POP, and that traffic can flow to and from all parts of the carrier's network through the POP"( VMD Dir., p. 43);</li> <li>• Burden is put on competing carriers to "show that a specific route cannot in fact be connected within their network"( VMD Dir., p. 43)</li> </ul>	Claimed that 138 routes satisfied FCC's triggers.	Indicated 258 routes satisfied the FCC's triggers (VMD Suppl.)

<p><b>BEGIN PROPRIETARY</b></p> <p>*****          *****          *****          *****          *****          *****          *****          *****          *****          *****</p> <p><b>END PROPRIETARY</b></p>	<p>Allegiance</p>
<ul style="list-style-type: none"> <li>• Generally use DS3 or OCn Transmission facilities to carry traffic between the collocation site and switching center;</li> <li>• DS3 or dark fiber UNES or special access is provided by VMD or leased from a 3d party (p. 4)</li> <li>• Allegiance has self-provisioned three fiber rings in the Washington DC metro area that are connected to the Allegiance MD switch and pass through five Allegiance MD collocations (p. 7);</li> <li>• Fiber ring circuits are "home runned"(p. 9);</li> <li>• Raises question of the validity of the assumption that the existence of fiber in 2 or more collocations establishes the existence of a dedicated transport routes between such wire centers;</li> <li>• Does not agree with VMD's identification of Allegiance's self-provisioned routes in MD (p. 10);</li> <li>• If fiber facilities exist at some OCn level, it is not necessarily economical to provide some lesser included bandwidth such as DS3 on any or all of the locations touched by the VMD identified Allegiance as a wholesale provider. Allegiance does not provide wholesale transport.(p.11)</li> </ul>	
<p><b>BEGIN PROPRIETARY</b></p> <p>*****          *****          *****          *****          *****          *****          *****          *****          *****          *****</p> <p><b>END PROPRIETARY</b></p>	

<p><b>AT&amp;T</b></p>	<p><u><b>BEGIN PROPRIETARY</b></u></p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p><u><b>END PROPRIETARY</b></u></p>	<ul style="list-style-type: none"> <li>• Verizon did not provide the required evidence to prove its assertions of non-impairment. Verizon expressly relies on various assumptions and speculations (AT&amp;T Dir., p.94);</li> <li>• AT&amp;T accounts for a number of the collocations that result in a wire center being counted by Verizon, but does not provide dedicated transport using the AT&amp;T-identified collocation (AT&amp;T Dir., p.94);</li> <li>• Verizon incorrectly assumes that all fiber optic based CLECs are therefore “operationally ready” simply because a physical path exists (AT&amp;T Dir., p.95);</li> <li>• The portion of AT&amp;T’s network relevant to the transport trigger is designed principally to backhaul traffic to AT&amp;T’s switch (AT&amp;T Dir., p.103);</li> <li>• Verizon assumes that because a CLEC provides information on a website or in advertising material about DS1 and DS3 services it offers, it is operationally ready to provide dedicated transport on a widely available basis;</li> <li>• VMD did not account for the fact that CLECs have a different network architecture;</li> <li>• VMD identified interstate routes that should not be assessed in the trigger analysis;</li> <li>• In the case of finding non-impairment of specific routes, the Commission should develop a multi-tiered transition process such as the one applicable to mass market switching (AT&amp;T Dir., p.118).</li> </ul>	<p><u><b>BEGIN PROPRIETARY</b></u></p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p><u><b>END PROPRIETARY</b></u></p>
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[illegible]

## ATTACHMENT FK-C – TESTIMONY OF THE PARTIES

FK-C

OCTOBER 4, 2004 FILED INITIAL COMMENTS OF THE PUBLIC SERVICE COMMISSION OF MARYLAND

<b>DOD<sup>1</sup></b>	N/A	<ul style="list-style-type: none"> <li>Did not perform an independent analysis, but did not dispute VMD findings</li> </ul>	N/A
<b>MCI</b>	<p><b><u>BEGIN PROPRIETARY</u></b></p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p><b><u>END PROPRIETARY</u></b></p>	<ul style="list-style-type: none"> <li>VMD did not provide evidence that the CLECs it identified are providing DS3 or DS1 level transport on specified routes;</li> <li>VMD incorrectly claims that any route on which the CLEC has placed fiber, the CLEC is providing DS1 and/or DS3 service (MCI Dir., p. 91);</li> <li>VMD assumes that "because all OCn-level fiber can be channelized to DS1 and DS3 transport, the CLECs are providing those types of transport" service (MCI Dir., p. 95);</li> <li>VMD does not provide evidence that the CLECs it identified provide dark fiber transport on the specified routes (MCI Dir., p. 96);</li> <li>VMD incorrectly assumes that "the existence of fiber on a route necessarily implies the presence of dark fiber because all fibers are construed with excess capacity in place" (MCI Dir., p. 96);</li> <li>VMD improperly includes all interstate routes (MCI Dir., p. 96).</li> </ul>	<p><b><u>BEGIN PROPRIETARY</u></b></p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p>*****</p> <p><b><u>END PROPRIETARY</u></b></p>

<sup>1</sup> Department of Defense

OCTOBER 4, 2004 FILED INITIAL COMMENTS OF THE PUBLIC SERVICE COMMISSION OF MARYLAND

XO,  
Xspedius,  
Covad

BEGIN PROPRIETARY

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END PROPRIETARY

- Xspedius disagrees with Verizon's claim that Xspedius is a wholesale provider of five routes;
- XO does not provide transport to third parties between two incumbent local exchange carrier central offices;
- Covad does not provide dedicate transport service between incumbent LEC central offices;
- The primary function of an XO/Xspedius fiber ring is to move traffic from an aggregation point to the CLEC's switching or hub site;
- VMD's approach of identifying routes is deficient in that it presents no evidence that the CLEC in question is providing transport service between the two ILEC wire centers;
- If a carrier satisfies the self-provisioning trigger it does not automatically qualify as an eligible provider under the competitive wholesale facilities trigger or vice versa;
- Verizon does not identify the wholesale providers as operationally ready, whether carriers' services are "widely available";
- In case of a Commission findings of non-impairment on any particular route, then the Commission must establish an "appropriate period for CLECs to transition from any unbundled [loops or transport] that the state finds should no longer be unbundled." (Joint Dir. XO, Xspedius, Covad, p. 25)

BEGIN PROPRIETARY

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END PROPRIETARY

**ATTACHMENT FK-D**

**SELF-PROVISIONING TRIGGER ANALYSIS**

**THIS ATTACHMENT CONTAINS PROPRIETARY INFORMATION AND IS NOT  
AVAILABLE FOR PUBLIC**

ATTACHMENT FK-E

WHOLESALE TRIGGER ANALYSIS

THIS ATTACHMENT CONTAINS PROPRIETARY INFORMATION AND IS NOT  
AVAILABLE FOR PUBLIC



**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>IN THE MATTER OF</b>	)	
<i>Unbundled Access to Network Elements</i>	)	<b>WC Docket No. 04-313</b>
	)	
<i>Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</i>	)	<b>CC Docket No. 01-338</b>

**AFFIDAVIT OF FAINA KASHTELYN**

I, Faina Kashtelyan, hereby make oath that the following facts, as set forth in this affidavit, are true to the best of my knowledge, information and belief.

1. I am over eighteen years of age, and am competent to testify and have personal knowledge of the facts as set out in this Affidavit.

2. I am a Regulatory Economist II of Telecommunications Division of the Staff of the Maryland Public Service Commission. My business address is 6 St. Paul Street, Baltimore, Maryland 21202.

3. I was a witness in Case 8983 before the Maryland Public Service Commission ("MDPSC") captioned *In the Matter of the Implementation of the Federal Communication Commission's Triennial Review Order*.

4. On March 12, 2004, I filed testimony in Case 8983 on behalf of the MDPSC Technical Staff.

5. On March 16, 2004, the Maryland Public Service Commission stayed Case 8983.

6. I affirm that the above-referenced pre-filed testimony was drafted by me or under my supervision and is true and accurate.